

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ANDRIAN SHERMAN,

PLAINTIFF,

v.

STEVEN HOBBS, et al. ,

Defendants.

Case No. 2:20-cv-00748-RAJ

ORDER

This matter comes before the Court on the Ninth Circuit’s Referral Notice filed on February 23, 2021. Dkt. # 14. The Ninth Circuit referred the matter to the Court “for the limited purpose of determining whether in forma pauperis status should continue for this appeal or whether the appeal is frivolous or taken in bad faith.” *Id.* (citing 28 U.S.C. § 1915(a)(3)); *see also Hooker v. Am. Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) (revocation of forma pauperis status is appropriate where district court finds the appeal to be frivolous).

The Court had granted *pro se* Plaintiff Andrian Sherman’s (“Plaintiff”) motion for leave to proceed in forma pauperis on June 12, 2020. Dkt. # 5. The same day, Plaintiff filed a 42 U.S.C. § 1983 complaint against several King County assistant prosecutors and

1 public defenders seeking \$300 million. Dkt. # 6.

2 Just three months prior, however, Plaintiff's complaint against the same
3 defendants alleging the same facts and wrongful conviction had been dismissed with
4 prejudice by the Honorable James L. Robert. Dkt. # 8 in Case 2:20-cv-00191-JLR,
5 *Sherman v. Hobbs*, et al. Judge Robert dismissed Plaintiff's claims against Plaintiff's
6 public defenders with prejudice because neither was a state actor; dismissed Plaintiff's
7 claims against state prosecutors with prejudice because they were absolutely immune
8 from civil damages; and dismissed the remainder of Plaintiff's claims with leave to
9 amend because Plaintiff had failed to show that his conviction had already been
10 invalidated. Dkt. # 8 at 3. Because Plaintiff failed to file an amended complaint within
11 the 20 days in which he was permitted to do so, Judge Robert later dismissed his
12 complaint with prejudice. Dkt. # 8 (Case No. 20-191).


13 In this action, Plaintiff asserted the same claims against the same parties without
14 curing any deficiencies noted by Judge Robert. Moreover, despite having filed suit
15 several months prior, Plaintiff stated in his complaint that he had not brought any other
16 lawsuits in federal court. Dkt. # 6 at 3. In his Report and Recommendation, the
17 Honorable Judge Tsuchida recommended that Plaintiff's complaint be dismissed with
18 prejudice. Dkt. # 8 at 4. After considering Plaintiff's objections, Dkt. # 9, filed past the
19 deadline for filing objections, the Court adopted Judge Tsuchida's Report and
20 Recommendation in full and dismissed Plaintiff's complaint with prejudice. Dkt. # 10.

21 The Court now determines that Plaintiff's in forma pauperis status should not
22 continue on appeal because the appeal is frivolous and not taken in good faith. *See* 28
23 U.S.C. § 1915(a)(3); *see also Hooker*, 302 F.3d at 1092 (revocation of forma pauperis
24 status is appropriate where district court finds the appeal to be frivolous). A pleading is
25 frivolous if it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*,
26 490 U.S. 319, 325 (1989). Pursuant to Rule 24(a)(3)(A) of the Federal Rules of
27 Appellate Procedure, the Court certifies that the appeal is not taken in good faith and that

1 Plaintiff is not entitled to proceed on appeal in forma pauperis.

2 The Clerk of the Court is directed to notify the parties and the United States Court
3 of Appeals for the Ninth Circuit that this Court certifies, pursuant to Federal Rule of
4 Appellate Procedure 24(a)(3)(A), that Plaintiff's appeal is not taken in good faith and that
5 he must therefore seek further authorization from the Court of Appeals pursuant to Rule
6 24(a)(5) to obtain leave to proceed in forma pauperis on appeal.

7
8 DATED this 4th day of March, 2021.

9 
10

11 The Honorable Richard A. Jones
12 United States District Judge
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28